Filed 5/31/07 Rosa F. v. Sup. Ct. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROSA F.

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES;

Real Party in Interest.

B197166

(Super. Ct. No. CK 44308)
(Marilyn Mackel, Commissioner)

ORIGINAL PROCEEDING; petition for extraordinary writ. Denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Barry Allen Herzog, Ellen L. Bacon and Jennifer Kimball for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel and Judith A. Luby, Deputy County Counsel for Real Party in Interest.

Rosa F., mother of dependent children Emilia D. (born in 1998), Selena D. (born in 1999), and Emiliano D. (born in 2000) (collectively, "the children"),[1] petitions for extraordinary writ review of orders setting a permanency planning hearing and terminating reunification services. (Welf. & Inst. Code, §§ 366.22, 366.26;[2] California Rules of Court, rule 8.452.) Rosa contends that the evidence does not support the juvenile court's findings that the Los Angeles County Department of Children and Family Services (DCFS) provided her with adequate reunification services and that her children would be at substantial risk if returned to her custody; she also maintains that the court erred by failing to exercise its discretion to extend reunification services. We deny the writ.

BACKGROUND

On January 4, 2005, a DCFS caseworker detained the children after investigating reports of serious domestic violence between Rosa and the children's father, who is not a party to this appeal.[3] The caseworker found damage throughout the home, including a non-functional front door with the door frame torn off, a bedroom door half torn off, and a hole in the wall the size of a car tire. An adult neighbor reported having to intervene during a recent violent incident between the children's parents. The children all reported being fearful of their father.

The DCFS detention report recounted Rosa's previous experience with the dependency process. Out of 15 investigations of reported child abuse, DCFS substantiated allegations of caretaker absence/incapacity or general neglect in four instances from late 2000, early 2003, and early December 2004. Rosa had received mandatory or voluntary family reunification and maintenance services at various times

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1 Rosa's eldest child, Ashley D. (born 1994), who has a different father than the other children, initially was included in these dependency proceedings, but was placed in her father's sole custody with jurisdiction terminated by a family law order.

2 All further statutory references are to the Welfare and Institutions Code.

3 Both Rosa and the children's father are deaf. The father has a record of violence and drug abuse.

since 2000. The case worker reported that Rosa recently had attempted to enroll in a drug rehabilitation program. Rosa told the caseworker that she knew domestic violence in the children's presence was inappropriate, and that she previously lost custody of the children temporarily due to her relationship with the children's father.

At the detention hearing on January 7, 2005, DCFS filed a section 300 petition alleging domestic violence and a history of neglect and substance abuse by both parents. The juvenile court ordered the children detained in foster care and ordered DCFS to provide Rosa with low-cost referrals for domestic violence counseling, parenting classes, and drug counseling and testing. It granted Rosa monitored visitation and required DCFS, in placing the children, to consider Rosa's ability to visit them. Rosa appeared at the hearing and denied the petition's allegations. The father was in custody and could not be located.

On January 31, 2005, the DCFS caseworker reported that both parents had criminal records. Rosa had enrolled as an outpatient at the Awakening Drug Rehabilitation Program for the Deaf (Awakening), where she would receive both substance abuse and domestic violence counseling. Rosa was unemployed and without a permanent residence. The caseworker reported that there was friction between Rosa and the children's paternal grandmother, who sometimes took care of the children and provided their needs when Rosa did not. Rosa had a history of leaving her children with inappropriate friends and admitted that she frequently made mistakes. The caseworker opined that Rosa had not benefited from all the previous services.

At the jurisdiction/disposition hearing on April 5, 2005, the court sustained the section 300 petition and found its allegations to be true. It placed the children with the paternal grandmother, ordered Rosa to address domestic violence and parenting problems, required drug testing, and granted her unmonitored day visits in a neutral setting. The court found that Rosa had made progress toward compliance with the case plan.

The DCFS status review reports for hearings on September 6, 2005, and March 7, 2006, stated that although Rosa had attended and participated in the Awakening program,

program staff believed that Rosa did not understand certain aspects of the program, appeared not to be fully motivated or serious about rehabilitation, and had stopped making progress. Rosa said she initially felt motivated to reform herself, but then became "flaky." In August 2005, Awakening discharged Rosa from the program for missing drug tests and counseling sessions and for entering into an inappropriate romantic relationship with a fellow patient in violation of the program's rules. Although Awakening later readmitted Rosa, it again discharged her from the program in March 2006, due to non-compliance with program policies, including her inappropriate boyfriend and her disruptive behavior toward other program participants.

In July 2005, when Rosa introduced her boyfriend to the DCFS caseworker, she acknowledged that the relationship was inappropriate. Soon thereafter, the boyfriend was discharged from Awakening for positive drug tests. A background check showed a history of sexual assault, sex with a minor, substance abuse, and probation violations. The DCFS caseworker informed Rosa of her boyfriend's record and warned her to end the relationship because it might put her children at risk. Rosa first refused, then claimed that she had ended the relationship (but she was still seen with the boyfriend), and later admitted that the relationship continued. Rosa hoped that once the children were returned to her, they all could move in with her boyfriend and live as a family. The DCFS caseworker reported that Rosa had a history of socializing with drug abusers and a record of drug abuse herself. During her participation in Awakening, however, Rosa's drug tests were negative.

Throughout the status review period, Rosa had no permanent home and had a pattern of living with one friend after another until her friends asked her to leave. The caseworker observed that Rosa tended to shift her responsibilities onto her friends by expecting them take her or her children to school or to medical appointments. Rosa proposed moving to Las Vegas, but the case worker urged her to stay in Los Angeles County to receive reunification services. At times when Rosa could not find housing with friends, she lived in a shelter or as an inpatient at Awakening. In March 2006, she left her temporary housing at Awakening, and her whereabouts were unknown for a time.

Rosa visited her children irregularly. She missed several visits and was late to others. Her excuses included illness, the change to daylight saving time, and issues with her boyfriend. In early August 2005, Rosa failed to attend a child's dental appointment for surgery which she knew required her presence. The paternal grandmother complained about Rosa's unreliability. The caseworker reported that the children were healthy and happy living with their paternal grandmother, but the two daughters hoped to reunite with Rosa.

Because Rosa had not shown the required progress on her case plan or a sustained ability to behave responsibly, the caseworker recommended termination of reunification services. The caseworker concluded that the paternal grandmother had cared for the children appropriately and recommended that the grandmother adopt the children, with Rosa keeping visitation rights.

At the September 2005 and March 2006 hearings, the court found that Rosa was in partial compliance with the case plan and ordered DCFS to continue providing family reunification services to both parents. At the latter hearing, though, the court limited Rosa to monitored visits, based in part on her relationship with her boyfriend.

In a report for a hearing on April 19, 2006, the caseworker related that Rosa wished to relocate to San Diego County, because there were no rehabilitation programs for the deaf in Los Angeles County other than Awakening, which would not allow her to return. Rosa still was living with the inappropriate boyfriend. The caseworker again recommended termination of reunification services and adoption. The court, however, found Rosa in partial compliance with the case plan, found that DCFS had not provided reasonable services to Rosa in light of her disability, and ordered DCFS to provide her with transportation funds between Los Angeles and San Diego.

In August 2006, Rosa had a nurturing visit with her children but also notified her caseworker that she might not be able to attend future visits due to the distance and cost. The caseworker reported that Rosa had independently found and enrolled in a program in San Diego, and that the program's staff confirmed that Rosa participated consistently and that her drug tests were negative. Rosa had planned to move into a homeless shelter that

could house her children, but by October, these plans had fallen through. In early November 2006, Rosa reported having found a new home living with two roommates. The caseworker discovered that Rosa's female roommate had five separate dependency referrals from San Diego County's child welfare agency; the caseworker could not get information on the male roommate. Rosa claimed the male roommate already had given the landlord notice that he was moving out. DCFS made tentative arrangements for Rosa to receive funds to help purchase bedroom furniture for the children. In early January, however, the male roommate had not moved out, while Rosa had been evicted for unknown reasons and was again homeless.

The court had ordered Rosa to arrive for visits at the DCFS office an hour early, so that the paternal grandmother and the children could be sure of her attendance before they left to meet her. Rosa was late to two visits during December and January, but completed appropriate and timely visits on other dates.

In mid-December 2006, the caseworker spoke with Rosa's counselor at her San Diego rehabilitation program, who reported that Rosa had successfully completed the program and had identified a potential job. In early January 2007, the caseworker again spoke with Rosa's counselor, who said that Rosa's drug tests continued to be negative and that she was still attending the program consistently and participating actively, but that she failed to understand the concept of the program and needed to continue in it. The caseworker reported that Rosa had completed the majority of her case plan, but warned that issues remained regarding Rosa's inappropriate roommates, her completion of her drug and alcohol program, and Rosa's withdrawal from therapy against her therapist's advice. On February 8, 2007, Rosa's counselor informed the caseworker that Rosa was not attending her program consistently and had told him that she was absent because of weekly visits to Los Angeles. When the caseworker informed him that Rosa visited Los Angeles only every other week, he expressed concern that Rosa was not being honest.

On January 11, 2007, the caseworker informed the court that Rosa was not eligible for family preservation services from DCFS as long as she resided outside Los Angeles County, but would be eligible to receive services from the San Diego equivalent if the

case were transferred there. The court ordered DCFS to obtain documentation of Rosa's progress from her San Diego treatment providers.

The contested section 366.22 hearing took place on February 21, 2007. Rosa did not appear, and her whereabouts were again unknown. County counsel recommended terminating reunification services, setting a permanency hearing date, and putting the burden on Rosa to show any changed circumstances by a section 388 petition. Rosa's counsel asked the court to continue reunification services and emphasized the classes and counseling Rosa had completed in San Diego and the initiative she had shown to secure such services there. Counsel for the children merely informed the court that the eldest daughter wished to be reunited with Rosa, the middle daughter was ambivalent, and the youngest child wished to stay with the paternal grandparents, but all wished to stay together.

The court found that DCFS had provided reasonable services to Rosa and her children, that Rosa was in partial compliance with her case plan, that the children could not then be safely returned to Rosa's custody, and that no substantial probability existed that they could be returned within six months. The court terminated reunification services, set a permanency hearing pursuant to section 366.26 for June 20, 2007, and ordered DCFS to consider both adoption and guardianship. Rosa timely filed notice of intent to seek the instant writ.

DISCUSSION

Rosa contends that there was insufficient evidence to support the juvenile court's finding that DCFS provided reasonable reunification services to her.

"In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Moreover, where more than one reasonable inference may be deduced from the facts, a reviewing court may not substitute its deductions for those of the trial court. (*Ibid.*) Reunification services need not be perfect,

but only reasonable under the circumstances. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Although Rosa correctly asserts that a juvenile court must apply the clear and convincing evidence standard in determining if services were reasonable, a reviewing court must affirm if substantial evidence that is credible and of solid value supports the trial court's finding. (*Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 119; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) Whether or not DCFS's services were perfect or ideal, substantial evidence shows that they were reasonable under the circumstances.

DCFS provided Rosa with two years of reunification services, longer than the maximum of 18 months allowed under sections 366.21, subdivision (g)(1) and 361.5, subdivision (a)(3). The agency made the full range of services for the deaf in Los Angeles County available to Rosa. Rosa's own conduct caused her to be ineligible for services at Awakening. Although after the first discharge, Awakening gave her a second chance to participate in the program, she once again failed to comply with program rules and was discharged. Nothing in the record suggests that other similar services for the deaf were available in Los Angeles or that DCFS failed to locate them. Moreover, when Rosa moved to San Diego, DCFS continued to assist Rosa with securing services, case plan compliance, visitation, and long-distance transportation.

Rosa also maintains that substantial evidence does not support the juvenile court's finding that the children would be put at risk of detriment if they were returned to her. But during two years of reunification services, Rosa displayed an ongoing inability to secure or keep a stable home. Just before the section 366.22 hearing at which she did not appear, she had been evicted yet again, and even her counsel did not know where she was or how to contact her. On that basis alone, the trial court was justified in finding substantial detriment if the children were returned to Rosa at that time. Other aspects of Rosa's history in the dependency process—such as attending required classes or counseling but failing to benefit from them, continuing inappropriate romantic

attachments, and failing to change her behavior after earlier referrals—also supported the court's finding of substantial risk of detriment.

Finally, Rosa contends that the juvenile court erred by denying her request to extend reunification services beyond the normal 18-month limit under sections 366.21, subdivision (g)(1) and 361.5, subdivision (a)(3).

We review an order terminating reunification services for abuse of discretion. (*In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.) For a court to abuse its discretion in this context, its determination must be arbitrary, capricious, or patently absurd. (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.) We should reverse the lower court's termination order only if after reviewing all the evidence in the light most favorable to the trial court's decision, we conclude that no judge reasonably could have arrived at that decision. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067, superseded by statute on another ground as stated in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.)

Under this deferential standard of review, we find no error in the juvenile court's termination of reunification services. Although Rosa asserts that the trial court was unaware of its discretion to extend services beyond the normal 18-month limit (see *In re Daniel G*. (1994) 25 Cal.App.4th 1205, 1209, 1216), the record does not support this assertion. The principal basis for extending reunification services beyond the statutory limit—a total failure of the dependency agency to provide adequate, reasonable services—does not apply here, as we have discussed. (See, e.g., *In re Daniel G*., *supra*, 25 Cal.App.4th at pp. 1209-1216; *In re David D*. (1994) 28 Cal.App.4th 941, 953; *In re Dino E*. (1992) 6 Cal.App.4th 1768, 1777.) We further note that Rosa's services already had continued for more than two years at the time of the section 366.22 hearing in February 2007—more than six months beyond the normal statutory cutoff. Moreover, Rosa's long history of being unable to provide an adequate, stable home for herself, let alone for her children, and her record of not benefiting from services provided to her, both support the court's finding that there was no substantial probability that the children

could be returned to Rosa within six months. (See 361.5, subdivision (a)(3); *In re Matthew Z.* (2000) 80 Cal.App.4th 545, 552.)

DISPOSITION

The petition for an extraordinary writ is denied.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, Acting P.J.

JACKSON, J.*

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* (Judge of the L. A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)